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**Memorandum 95-56****Annual Report for 1995**

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Attached to this memorandum is a draft of the Commission's *Annual Report for 1995*. If approved, the staff will send it to the printer, subject to any necessary revisions.

We have not included the numerous appendices that will be printed with the Annual Report, in order to save copying costs. These items are listed in the table of contents on pages 619-20 of the attached Annual Report. All of these reports and recommendations have been previously approved by the Commission. If any Commissioner wishes to examine any of the listed appendices, let the staff know and we will provide a copy for you. In addition, we will have a complete copy available at the November meeting.

Much of the Annual Report language is the same or similar to past reports, but particular attention should be paid to the revised and new material concerning the 1996 Legislative Program (pp. 624-25), Major Studies in Progress (pp. 625-28), and Commission Budget (pp. 634-35).

We have also added a reference to *Juran v. Epstein*, 23 Cal. App. 4th 882, 893-94, 28 Cal. Rptr. 2d 588, 594 (1994), in footnote 15 on page 631. In this case, the court used Commission Comments to help determine legislative intent, but rejected the use of Commission staff memorandums. This is in accord with Commission policy and is worth noting in the Annual Report. The full discussion on this point is as follows:

The Legislature adopted section 150, subdivision (a) without change based on a recommendation from the California Law Revision Commission ("Commission"). In proposing the statutory language, the Commission expressly recognized that under Civil Code section 1624, former subdivision 6., the courts frequently enforced "oral promise[s] to make or not to revoke a will in order to avoid the harshness that would be caused by a strict application of the Statute of Frauds." (16 Cal.Law Revision Com.Rep. (December 1982) p. 2348.) The Commission, however, criticized this practice explaining "[w]here an oral agreement to make or not to revoke a will is alleged after promisor is deceased and unable to testify, there is an opportunity for the fabrication of testimony concerning

the existence of the agreement. Sound policy requires some form of written evidence that such an agreement actually exists.” (*Id.* at pp. 2348-2349.) The Commission qualified this statement by noting “[t]o some extent, this danger is ameliorated by the rule in California that there must be clear and convincing evidence to prove an oral agreement to make or not to revoke a will. See *Notten v. Mensing* [1935] 3 Cal.2d 469, 477 [45 P.2d 198].” (*Id.* at p. 2349, fn. 152.) The Commission concluded “[t]he proposed law ... will provide a clearer, more detailed statutory statement than the present Statute of Frauds and will limit the opportunity for fraud by fabricated proof of an oral agreement.” [FN5] (16 Cal.Law Revision Com.Rep., *supra*, at p. 2350.)

**Footnote 5:**

In later comments, the Commission noted that section 150 was derived from and substantially identical to Uniform Probate Code section 2-701 (8 West’s U.Laws Ann. (1983) U.Prob. Code, Contractual Arrangements Relating to Death, Sec. 2-701, pp. 155-159). As did the Commission, the drafters of the Uniform Probate Code section 2-701 recognized the development of equitable doctrines for enforcing oral agreements and stated that “[i]t is the purpose of this section to tighten the methods by which contracts concerning succession may be proved.” (*Id.*, com. at p. 155.)

In addition to directing us to the Commission’s comments, both parties discuss at length a document written by a Commission staff member entitled “Memorandum.” Since the Memorandum was a working paper and there was no evidence it was considered or even seen by the Legislature, it is entitled to little or no weight in discerning legislative intent.

If any cases holding statutes unconstitutional are discovered before the meeting, the staff will present the additional material in a supplement for inclusion in the report on pages 637-38.

Respectfully submitted,

Stan Ulrich  
Assistant Executive Secretary

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION  
COMMISSION**

Annual Report for 1995

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

Cite this pamphlet as *Annual Report for 1995*, 25 Cal. L. Revision  
Comm'n Reports 615 (1995).

## SUMMARY OF WORK OF COMMISSION

### **Recommendations Enacted in the 1995 Legislative Session**

In 1995, four bills introduced to effectuate the Commission's recommendations were enacted. These bills amended 101 sections, added 117 sections, and repealed 9 sections of California statutes. Commission-recommended legislation enacted in 1995 concerned the following subjects:

- Administrative adjudication by state agencies
- Uniform Prudent Investor Act
- Exemptions from enforcement of money judgments
- Powers of attorney

### **Recommendations to the 1996 Legislative Session**

In 1996, the Commission plans to submit recommendations on the following subjects to the Legislature:

- Administrative adjudication followup
- Statute of limitations in trust matters
- Inheritance from or through child born out of wedlock
- Inheritance from or through foster parent or stepparent
- Collecting estate of small value without probate
- Covenants that run with the land
- Tolling statute of limitation when defendant out of state
- Homestead exemption

### **Commission Plans for 1996**

During 1996, the Commission will work on judicial review of agency action, administrative rulemaking, unfair competition litigation, health care decisions, the Uniform Unincorporated Non-profit Association Act, the business judgment rule and derivative actions, and trial court unification by attrition. The Commission will consider other subjects as time permits, including the best evidence rule, obsolete restrictive covenants, the mediation privilege, standing of parents to sue for wrongful death of child, and protective proceedings for federal benefits.



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STATE OF CALIFORNIA

PETE WILSON, Governor

## CALIFORNIA LAW REVISION COMMISSION

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ARTHUR K. MARSHALL  
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SANFORD M. SKAGGS

November 2, 1995

To: The Honorable Pete Wilson  
*Governor of California*, and  
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission herewith submits this report of its activities during 1995.

All four of the bills introduced in 1995 to effectuate the Commission's recommendations were enacted. A concurrent resolution recommended by the Commission was adopted.

The Commission is grateful to the members of the Legislature who carried Commission-recommended bills:

- Senator Beverly (Uniform Prudent Investor Act)
- Senator Campbell (Power of Attorney technical bill)
- Senator Kopp (administrative adjudication, debtor-creditor relations)
- Assembly Member Rainey (concurrent resolution continuing the Commission's authority to study previously authorized topics)

The Commission held four two-day meetings and four one-day meetings during 1995. Meetings were held in Los Angeles, Sacramento, San Diego, and San Francisco.

Respectfully submitted,

Colin W. Wied  
*Chairperson*



## ANNUAL REPORT FOR 1995

### Introduction

The California Law Revision Commission<sup>1</sup> was created in 1953 as the permanent successor to the Code Commission and given responsibility for the continuing substantive review of California statutory and decisional law.<sup>2</sup> The Commission studies the law in order to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission assists the Legislature in keeping the law up to date by:

- Intensively studying complex and sometimes controversial subjects
- Identifying major policy questions for legislative attention
- Gathering the views of interested persons and organizations
- Drafting recommended legislation for legislative consideration

The efforts of the Commission permit the Legislature to determine significant policy questions rather than to concern itself with the technical problems in preparing background studies, working out intricate legal problems, and drafting implementing legislation. The Commission thus enables the Legislature to accomplish needed reforms that otherwise might not be made because of the heavy demands on legislative time. In some cases, the Commission's report demonstrates that no new legislation on a particular topic is needed, thus relieving the Legislature of the need to study the topic.

The Commission consists of:

- A Member of the Senate appointed by the Rules Committee
- A Member of the Assembly appointed by the Speaker

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1. See Gov't Code §§ 8280-8298 (statute establishing Law Revision Commission) (Appendix 1 *infra*).

2. See 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954, at 7 (1957).

- Seven members appointed by the Governor with the advice and consent of the Senate
- The Legislative Counsel, who is an ex officio member

The Commission may study only topics that the Legislature by concurrent resolution authorizes it to study. The Commission now has a calendar of 24 topics.<sup>3</sup>

Commission recommendations have resulted in the enactment of legislation affecting 18,743 sections of the California statutes: 8,798 sections have been added, 3,103 sections amended, and 6,842 sections repealed. The Commission has submitted more than 290 recommendations to the Legislature. Approximately 96% of these recommendations have been enacted in whole or in substantial part.<sup>4</sup>

The Commission's recommendations are published in softcover and later are collected in hardcover volumes. A list of past publications and information on obtaining copies are at the end of this Annual Report.

### **1996 Legislative Program**

In 1996, the Commission plans to submit recommendations to the Legislature concerning the following subjects:

#### **Administrative Law**

*Administrative adjudication followup.* Major legislation was enacted on Commission recommendation in 1995 to reform state agency administrative adjudication procedure. The legislation is not operative until July 1, 1997, and before it becomes operative the Commission will recommend enactment miscellaneous cleanup and related provisions.

#### **Civil Procedure**

*Tolling statute of limitation when defendant out of state.* The Commission will recommend repeal of Code of Civil Procedure

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3. See list of topics under "Calendar of Topics Authorized for Study" set out in Appendix 2 *infra*.

4. See list of recommendations and legislative action in Appendix 3 *infra*.

Section 351 (tolling statute of limitation when defendant out of state), which predates California's long-arm jurisdiction process.

#### **Debtor Creditor Law**

*Homestead exemption.* The Commission will recommend repeal of the declared homestead exemption and expansion of the claimed homestead exemption.

#### **Probate Law**

*Statute of limitations in trust matters.* The Commission will recommend clarification of the statute of limitations for trust accountings in light of an incorrect case law interpretation of the existing statute.

*Inheritance from or through child born out of wedlock.* The Commission will propose correction of an anomaly in the inheritance statute governing inheritance from or through a child born out of wedlock.

*Inheritance from or through foster parent or stepparent.* The Commission will propose clarification of the statute governing inheritance from or through a foster parent or stepparent to resolve conflicting case law interpretations of the provision.

*Collecting estate of small value without probate.* The Commission will propose codification of the case law principle that a revocable living trust is excluded from the computation of the value of a decedent's state for probate-avoidance purposes.

#### **Property Law**

*Covenants that run with the land.* The Commission will recommend repeal of Civil Code Section 1464, California's codification of the First Rule in Spencer's Case (covenant concerning thing not in being must refer "assigns" in order to run with the land).

### **Major Studies in Progress**

During 1996, the Commission plans to work on six major topics: judicial review of agency action, administrative rulemaking, unfair competition litigation, health care decisions, the Uniform Unincorporated Nonprofit Association Act, and the business judgment rule

and derivative actions. The Commission will also consider other subjects to the extent time permits.

### **Judicial Review of Agency Action**

Judicial review of agency action is the second phase of the Commission's study of administrative law and procedure. The first phase — administrative adjudication by state agencies — was the subject of a Commission recommendation to the 1995 legislative session that was enacted as 1995 Cal. Stats. ch. 938.

The Commission has considered background studies prepared by its consultant, Professor Michael Asimow of UCLA Law School, on this topic. See Asimow, *Judicial Review of Administrative Decision: Standing and Timing* (September 1992); Asimow, *A Modern Judicial Review Statute to Replace Administrative Mandamus* (November 1993); Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies*, 42 UCLA L. Rev. 1157 (1995).

The Commission has circulated for comment a tentative recommendation to enact a comprehensive judicial review statute for all governmental action, both state and local. The proposed law would replace administrative mandamus and other procedural devices currently used for judicial review, and would clarify the procedures and standards for judicial review. The Commission is currently reviewing comments received on the tentative recommendation. The Commission will complete work on this project during 1996.

### **Administrative Rulemaking**

The third phase of the Commission's study of administrative law and procedure, after state agency adjudication and judicial review of agency action, is administrative rulemaking. The Commission will activate this phase of the study in 1996.

### **Unfair Competition Litigation**

The Commission commenced work on the unfair competition litigation statute, Business and Professions Code Section 17200 *et seq.*, following receipt of a background study from the Commission's consultant, Professor Robert C. Fellmeth of the University of San Diego Law School. See Fellmeth, *California's Unfair Competition Act: Conundrums and Confusions* (January 1995). The

Commission hopes to complete work on this topic during 1996 and submit a recommendation to the Governor and Legislature for the 1997 legislative session.

#### **Health Care Decisions**

If time permits, the Commission plans to begin consideration of revisions of the Durable Power of Attorney for Health Care, Probate Code Section 4600 *et seq.*, in 1996. This review would consider changes in this area of the law that have occurred throughout the country since the basic statute was enacted in California in 1983, and would include a review of the Uniform Health-Care Decisions Act (1993). These issues were reserved for future study when the Commission reviewed power of attorney statutes culminating in enactment of the comprehensive Power of Attorney Law in 1994.

#### **Uniform Unincorporated Nonprofit Association Act**

The Commission has retained a consultant, Professor Michael Hone of the University of San Francisco Law School, to prepare an analysis of the Uniform Unincorporated Nonprofit Association Act (1992). The Commission plans to commence consideration of this matter early in 1996, after the anticipated receipt of Professor Hone's analysis. The Commission hopes to complete work on this topic during 1996 and submit a recommendation to the Governor and Legislature for the 1997 legislative session.

#### **Business Judgment Rule and Derivative Actions**

During 1995 the Commission commenced work on two related corporate governance matters — the business judgment rule and derivative actions. The Commission's consultant on this study, Professor Melvin Eisenberg of the University of California, Berkeley, Law School, has prepared background studies on both these matters. See Eisenberg, *Whether the Business-Judgment Rule Should Be Codified* (May 1995), and Eisenberg, *The Requirement of Making a Demand on the Board Before Bringing a Derivative Action, and the Standard of Review of a Board or Committee Determination that a Derivative Action Is Not in the Corporation's Best Interests* (October 1995). The Commission has begun consid-

eration of both studies. The Commission plans to complete work on this project during 1996.

#### **Trial Court Unification by Attrition**

Pursuant to legislative directive, the Commission in January 1994 issued its report on *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1 (1994). Since then the legislative directive has been revised to assign the Commission responsibility to report recommendations pertaining to statutory changes that may be necessitated by court unification. 1995 Cal. Stat. res. ch. 87.

At the 1995 session the Legislature enacted SB 162 (Lockyer), 1995 Cal. Stat. ch. 963, providing for gradual unification by the Governor's conversion of vacant municipal court seats to superior court seats. During 1996 the Commission will review this approach to trial court unification to ascertain whether any conforming statutory changes are necessary or desirable.

#### **Other Subjects**

The major studies in progress described above will dominate the Commission's time and resources during 1996. If time permits the Commission will work other subjects into its agenda. These subjects include two matters currently in progress — (1) the best evidence rule and (2) obsolete restrictive covenants — as well as three new matters — (1) the mediation privilege, (2) standing of parents to sue for wrongful death of child, and (3) protective proceedings for federal benefits.

#### **Calendar of Topics for Study**

The Commission's calendar of topics is set out in Appendix 2 in this Annual Report. Each of these topics has been authorized for Commission study by the Legislature.<sup>5</sup> [*Because of the number*

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5. Section 8293 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topics which the Legislature by concurrent resolution refers to it for study. For the current authorization, see 1995 Cal. Stat. res. ch. 87. In addition, Code of Civil Procedure Section 703.120 requires the Commission to review statutes providing for exemp-

*and scope of the topics already on its calendar, the Commission does not at this time recommend any additional topics for Commission study. \*\*\*Subject to change after review of Memorandum 95-50.\*\*\*]*

### **Function and Procedure of Commission**

The principal duties of the Commission<sup>6</sup> are to:

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,<sup>7</sup> bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.
- (3) Recommend such changes in the law as it deems necessary to bring California law into harmony with modern conditions.<sup>8</sup>

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. As a rule, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes it to study.<sup>9</sup> However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.<sup>10</sup>

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tions from enforcement of money judgments every 10 years and to recommend any needed revisions.

6. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission). See Appendix 1 *infra*.

7. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 8261. The Commission's Executive Secretary serves as an Associate Member of the National Conference of Commissioners on Uniform State Laws.

8. Gov't Code § 8289. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the California Supreme Court or the United States Supreme Court. Gov't Code § 8290.

9. Gov't Code § 8293.

10. Gov't Code § 8298.

The Commission's work on a recommendation begins after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field of law involved who is retained as a consultant. Use of expert consultants provides the Commission with invaluable assistance and is economical because the attorneys and law professors who serve as consultants have already acquired the considerable background necessary to understand the specific problems under consideration and receive little more than an honorarium for their services. Expert consultants are also retained to advise the Commission at meetings.

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to the State Bar, other bar associations, and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what recommendation, if any, the Commission will make to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation to the Legislature (including a draft of any legislation necessary to effectuate its recommendation) is published.<sup>11</sup> The background study is sometimes published with the recommendation published by the Commission or in a law review.<sup>12</sup>

The Commission ordinarily prepares an official Comment explaining each section it recommends. These Comments are included in the Commission's recommendations and may be revised by the Commission in later reports to reflect amendments

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11. Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.

12. For recent background studies published in law reviews, see Kasner, *Donative and Interspousal Transfers of Community Property in California: Where We Are (or Should Be) After MacDonald*, 23 Pac. L.J. 361 (1991); Asimow, *Toward a New California Administrative Procedure Act: Adjudication Fundamentals*, 39 UCLA L. Rev. 1067 (1992). For a list of background studies published in law reviews before 1991, see 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971); 11 Cal. L. Revision Comm'n Reports 1008 n.5, 1108 n.5 (1973); 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976); 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982); 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984); 18 Cal. L. Revision Comm'n Reports 212 n.17, 1713 n.20 (1986); 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988); 20 Cal. L. Revision Comm'n Reports 198 n.16 (1990).

made in the legislative process.<sup>13</sup> The reports provide background with respect to the Commission intent in proposing the enactment, such intent being reflected in the Comments to the various sections of the bill contained in the Commission's recommendation, except to the extent that new or revised Comments are set out in the report on the bill as amended.<sup>14</sup>

Comments indicate the derivation of a section and often explain its purpose, its relation to other sections, and potential problems as to its meaning or application. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions.<sup>15</sup> However, while the Commission endeavors in Comments to explain any changes in the law made by a section, the Commission does not claim that every inconsistent case is noted in the Comments, nor can it anticipate judicial conclusions as to the significance of existing case authorities.<sup>16</sup> Hence, failure to note a change in prior law or to refer to an inconsistent judicial decision is not intended to, and should not, influence the construction of a clearly stated statutory provision.<sup>17</sup>

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13. Many amendments are made on recommendation of the Commission to deal with matters brought to the Commission's attention after publication of its recommendation. In some cases, however, an amendment may be made that the Commission believes is not desirable and does not recommend.

14. For an example of such a report, see Appendix 5 *infra*. Reports containing new or revised comments are printed in the Commission's Annual Report for the year in which the recommendation was proposed. For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973). On rare occasions, the Commission will approve revised Comments to make important editorial changes or correct obvious errors in past Comments.

15. E.g., *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968); see also *Milligan v. City of Laguna Beach*, 34 Cal. 3d 829, 831, 670 P.2d 1121, 1122, 196 Cal. Rptr. 38, 39 (1983); *Juran v. Epstein*, 23 Cal. App. 4th 882, 893-94, 28 Cal. Rptr. 2d 588, 594 (1994). The Commission concurs with the opinion of the court in *Juran* that staff memorandums to the Commission should not be considered as legislative history. *Id.*, 23 Cal. App. at 894 n.5, 28 Cal. Rptr. 2d at 594 n.5.

Commission Comments are published by Bancroft-Whitney and West Publishing Company in their print and CD-ROM editions of the annotated codes, and printed in selected codes prepared by other publishers.

16. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 109 Cal. Rptr. 421 (1973).

17. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr.

Commission publications are distributed to the Governor, legislative leadership, and, on request, to heads of state departments and a substantial number of judges, district attorneys, lawyers, law professors, and law libraries throughout the state.<sup>18</sup> Thus, a large and representative number of interested persons is given an opportunity to study and comment on the Commission's work before it is considered for enactment by the Legislature.<sup>19</sup>

The reports, recommendations, and studies of the Commission are republished in a set of hardcover volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the state. These volumes are available at most county law libraries and at some other libraries. Some hardcover volumes are out of print, but others are available for purchase.<sup>20</sup>

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649, 653-54 (1971). For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm'n Reports 1163 (1973). See also 1974 Cal. Stat. ch. 227.

18. See Gov't Code § 8291. In the past, Commission publications have generally been distributed free of charge. Due to budget constraints, the Commission in 1991 began implementing a charge for Commission publications. For price list, see "Commission Publications" *infra*.

19. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A. J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965). See also Quillinan, *The Role and Procedures of the California Law Revision Commission in Probate and Trust Law Changes*, 8 Est. Plan. & Cal. Prob. Rep. 130-31 (Cal. Cont. Ed. Bar 1987).

20. See "Commission Publications" *infra*.

### Personnel of Commission

As of November 2, 1995, the following persons were members of the Law Revision Commission:

<b>Members Appointed by Governor</b> <sup>21</sup>	<b><i>Term Expires</i></b>
Colin W. Wied, San Diego <i>Chairperson</i>	October 1, 1995
Allan L. Fink, San Francisco <i>Vice Chairperson</i>	October 1, 1997
Christine W.S. Byrd, Los Angeles	October 1, 1997
Robert E. Cooper, Los Angeles	October 1, 1995
Arthur K. Marshall, Los Angeles	October 1, 1995
Edwin K. Marzec, Santa Monica	October 1, 1995
Sanford M. Skaggs, Walnut Creek	October 1, 1997

#### **Legislative Members** <sup>22</sup>

Senator Quentin L. Kopp, San Francisco  
Assembly Member [vacant]

#### **Legislative Counsel** <sup>23</sup>

Bion M. Gregory, Sacramento

In January 1995, the Commission elected Colin W. Wied as Chairperson for the remainder of the term of Daniel M. Kolkey, who had resigned to accept a position as the Governor's Counsel and Legal Affairs Secretary, and elected Edwin K. Marzec as Vice Chairperson for the remainder of Mr. Wied's term.

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21. Seven Commission members are appointed by the Governor with the advice and consent of the Senate. Gov't Code § 8281. These Commissioners serve staggered four-year terms. *Id.* The provision in Government Code Section 8281 to the effect that Commission members appointed by the Governor hold office until the appointment and qualification of their successors has been superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 60 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

22. The Senate and Assembly members of the Commission serve at the pleasure of the appointing power, the Senate Committee on Rules and the Speaker of the Assembly, respectively. Gov't Code § 8281.

23. The Legislative Counsel serves on the Commission by virtue of office. Gov't Code § 8281.

Effective September 1, 1995, the Commission reelected Colin W. Wied as Chairperson, and Alan L. Fink as Vice Chairperson (succeeding Edwin K. Marzec). The terms of the new officers end August 31, 1996.

In February 1995, Governor Wilson appointed Robert E. Cooper to succeed Daniel M. Kolkey. \*\*\**In November 1995, Governor Wilson reappointed \_\_\_\_\_ as Commission members.*\*\*\*

In August 1995, Senator Quentin L. Kopp was appointed by the Senate Rules Committee as the Commission's Senate Member, succeeding Senator Tom Campbell.

As of November 2, 1995, the following persons were on the Commission's staff:

*Legal*

Nathaniel Sterling  
*Executive Secretary*

Barbara S. Gaal  
*Staff Counsel*

Stan Ulrich  
*Assistant Executive Secretary*

Robert J. Murphy  
*Staff Counsel*

*Secretarial*

Victoria V. Matias  
*Composing Technician*

During the summer of 1995, Yanping Cao, a student at Stanford Law School, worked for the Commission as a student legal assistant, funded by the Stanford Public Interest Law Foundation. During the spring and fall law school terms, Matthew Waddell assisted the Commission as part of the Public Service Program of the University of Pennsylvania Law School, and in the fall term, Tina Chen assisted the Commission under the same program. Starting in the fall term, Deborah J. Muns, a student at Stanford Law School, has worked as a student legal assistant under the work-study program.

**Commission Budget**

The Commission's operations are funded from the state general fund. The amount appropriated to the Commission for the 1995-96

fiscal year is \$417,000, less a \$5,000 unallocated reduction. This represents a reduction of 40% over the past five years.

In order to remain productive within the limits of the reduced budget allocation, the Commission has substantially reduced its staffing and revised its operations. The Commission now imposes a charge for copies of its materials to cover reproduction and shipping costs. The Commission has reduced its meeting time to limit travel expenses and other associated meeting costs.

There is some mitigation from outside sources available to the Commission. The Commission receives substantial donations of necessary library materials from the legal publishing community, especially Bancroft-Whitney Company, California Continuing Education of the Bar, and West Publishing Company. The Commission receives additional library materials from other legal publishers and other law reform agencies on an exchange basis, and has access to the Stanford University Law Library. The Commission is grateful for their contributions.

The Commission has suffered reduced productivity as a result of the substantial budget cuts, as reflected in the Commission's legislative programs for 1995 and 1996.

### **Other Activities**

By statute the Commission is directed to cooperate with any bar association or other learned, professional, or scientific association, institution or foundation in any manner suitable for the fulfillment of the purposes of the Commission.<sup>24</sup>

#### **National Conference of Commissioners on Uniform State Laws<sup>25</sup>**

The Commission's executive secretary participated in the National Conference of Commissioners on Uniform State Laws, in Kansas City, Missouri, August 28 to September 4, 1995. Matters considered at the conference included uniform acts on unclaimed

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24. Gov't Code § 8296.

25. The Commission is directed by statute to receive and consider proposed changes in the law recommended by the National Conference of Commissioners on Uniform State Laws. Gov't Code § 8289. The Commission's executive secretary is an associate member of the National Conference.

property, statute and rule construction, punitive damages, principal and income, and Commercial Code Articles 2, 5, and 9.

The executive secretary also served on the drafting committee for a new Uniform Trust Act. The uniform act will be based on the California Trust Law, a national model enacted on recommendation of the Commission.<sup>26</sup>

#### **Consultant Activities**

The Commission's consultant on administrative law and procedure, Professor Michael Asimow, published articles in legal journals concerning administrative adjudication and judicial review, based on his background studies for the Commission. Professor Asimow also addressed various bar organizations on these matters.

### **Legislative History of Recommendations Submitted to 1995 Legislative Session**

The Commission recommendations were included in four bills and a concurrent resolution recommended for enactment at the 1995 legislative session. Four bills were enacted and the concurrent resolution was adopted.

#### **Administrative Adjudication by State Agencies**

Senate Bill 523 (1995 Cal. Stat. ch. 938) was introduced by Senator Quentin L. Kopp to effectuate a Commission recommendation. See *Administrative Adjudication by State Agencies*, 25 Cal. L. Revision Comm'n Reports 55 (1995). The bill was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 938 of the Statutes of 1995 (Senate Bill 523)*, 25 Cal. L. Revision Comm'n Reports 711 (Appendix 7, *infra*).

#### **Uniform Prudent Investor Act**

Senate Bill 222 (1995 Cal. Stat. ch. 63) was introduced by Senator Robert Beverly to effectuate a Commission recommendation.

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26. See *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501 (1986); enacted 1986 Cal. Stat. ch. 820.

See *Uniform Prudent Investor Act*, 25 Cal. L. Revision Comm'n Reports 543 (1995). The bill was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 63 of the Statutes of 1995 (Senate Bill 222)*, 25 Cal. L. Revision Comm'n Reports 673 (Appendix 4, *infra*).

#### **Debtor-Creditor Relations**

Senate Bill 832 (1995 Cal. Stat. ch. 196) was introduced by Senator Quentin L. Kopp to effectuate a Commission recommendation. See *Debtor-Creditor Relations*, 25 Cal. L. Revision Comm'n Reports 1 (1995). The bill was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 196 of the Statutes of 1995 (Senate Bill 832)*, 25 Cal. L. Revision Comm'n Reports 707 (Appendix 5, *infra*). The portion of the recommendation relating to attachment in actions where the claim is partially secured<sup>27</sup> was not enacted, nor were a number of Family Code technical amendments. However, the provisions concerning exemptions from enforcement of money judgments and applicable in bankruptcy were enacted.

#### **Power of Attorney Law**

Senate Bill 984 (1995 Cal. Stat. ch. 300) was introduced by Senator Tom Campbell to make a number of technical revisions in the Power of Attorney Law recommended by the Commission. For the basic legislation, see *1995 Comprehensive Power of Attorney Law*, 24 Cal. L. Revision Comm'n Reports 323 (1994). The bill was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 300 of the Statutes of 1995 (Senate Bill 984)*, 25 Cal. L. Revision Comm'n Reports 709 (Appendix 6, *infra*).

#### **Resolution Authorizing Topics for Study**

Assembly Concurrent Resolution 14 (1995 Cal. Stat. res. ch. 87) was introduced by Assembly Member Richard Rainey. It continues

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27. The attachment portion of the recommendation was submitted in fulfillment of a legislative direction in 1990 Cal. Stat. ch. 943, § 3.

the Commission's authority to study 24 topics previously authorized for study.

### **Report on Statutes Repealed by Implication or Held Unconstitutional**

Section 8290 of the Government Code provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared<sup>28</sup> and has the following to report:

- No decision holding a state statute repealed by implication has been found.
- No decision of the United States Supreme Court holding a state statute unconstitutional has been found.
- No decision of the California Supreme Court holding a state statute unconstitutional has been found.<sup>29</sup>

### **Recommendations**

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics previously authorized.<sup>30</sup>

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28. This study has been carried through 43 Cal. Rptr. 2d 677 (1995) and \_\_\_ S. Ct. (1994-95 Term).

29. In *People v. Heitzman*, 9 Cal. 4th 205, 886 P.2d 1229, 937 Cal. Rptr. 2d 236 (1994), the Supreme Court construed Penal Code Section 368(a), proscribing elder abuse by caretakers, to avoid holding the statute unconstitutionally vague under the 14th Amendment of the US Constitution and Article I, Section 7, of the California Constitution.

30. See "Calendar of Topics Authorized for Study," Appendix 2 *infra*.